

June 20, 2007

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Re: *In the Matter of Steven J. Smith v. City of Princeton*
OAH Docket No. 3-3100-18039-2

Dear Counsel:

This letter constitutes the First Prehearing Order concerning matters discussed in the telephone prehearing conference held yesterday. Ms. Joppa appeared for Mr. Smith (the Petitioner); Mr. Schieffer appeared for the City of Princeton (City).

Our discussions mainly concerned how to go about resolving two issues: (1) the legal issue of whether the City is precluded from discharging the veteran based on the conclusions reached by the neutral panel in its decision dated July 8, 2006; and (2) who should properly hear the case on the merits, in the event I were to determine that the City is not bound by that decision; in other words, should I hear the case on the merits, or should it be heard by another neutral panel? With regard to the second issue, it appears to me that under Minn. Stat. § 197.46, the Veterans Preference Act grants veterans the right to be removed from public employment only for "incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing." The statute further provides that such hearing "shall" be held before a civil service board or commission, but where no civil service board or commission exists, the hearing shall be held by a panel of three persons (as was previously done in this case). A veteran who has been denied this right may petition the Commissioner of Veterans affairs for an order granting appropriate relief.

Accordingly, if I were to recommend to the Commissioner that the City is precluded from discharging the Petitioner based on the previous panel decision, and that recommendation is accepted, that would end the inquiry and there would be no need for a hearing. But if I were to recommend that the City is not precluded from discharging the Petitioner by the previous panel decision, I believe the appropriate result would be that the hearing on the merits must take place before another three-

person panel appointed under Minn. Stat. § 197.46. The City in fact offered the Petitioner this option at the time he was given written notice of discharge.

During the conference we agreed that the preliminary legal issue as to whether the City is bound by the previous panel decision could likely be resolved on cross motions for summary disposition and that the hearing currently scheduled to take place on July 12, 2007, would have to be rescheduled. In connection with the summary disposition motions, I would also like the parties to address the second issue if there is disagreement about who should hear the merits of the case.

We set the following procedural schedule:

June 27, 2007: Deadline for filing motions for summary disposition.
July 11, 2007: Deadline for responding to summary disposition motions.
August 23, 2007: Hearing, to take place at OAH, if necessary after resolution
 of the summary disposition motions.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

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cc: Docket Coordinator